

AMENDED IN ASSEMBLY AUGUST 6, 2012

AMENDED IN ASSEMBLY JUNE 18, 2012

AMENDED IN SENATE MAY 10, 2011

AMENDED IN SENATE APRIL 13, 2011

SENATE BILL

No. 615

Introduced by Senator Calderon

February 18, 2011

An act to amend ~~Sections 742.20 and~~ Section 742.40 of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 615, as amended, Calderon. Multiple employer welfare arrangements: benefits.

Commencing January 1, 2014, existing law, the federal Patient Protection and Affordable Care Act (PPACA), requires a health insurance issuer that offers coverage in the small group or individual market to ensure that such coverage includes the essential health benefits package, as defined. Under existing federal law, a health insurance issuer, defined to include an insurance company, insurance service, or insurance organization including a health maintenance organization and excluding a group health plan, that offers health insurance coverage in the individual or small group market is required to ensure that such coverage includes the essential health benefits package. Commencing January 1, 2014, existing law requires specified individuals to ensure that they are covered under minimum essential coverage and a penalty is required to be imposed for failure to comply with that requirement.

Existing law prohibits a self-funded or partially self-funded multiple employer welfare arrangement (MEWA) from providing any benefits for any resident of this state without obtaining a certificate of compliance from the Insurance Commissioner. Existing law imposes various eligibility requirements on a self-funded or partially self-funded MEWA in order to obtain a certificate of compliance, including, among other things, that it be a nonprofit corporation, that it be established and maintained by a specified association with at least 200 paid members, and that benefits be ~~only~~ offered *only* to association members.

Under existing law, a self-funded or partially self-funded MEWA is limited to providing certain benefits that include, among other things, medical, dental, and surgical benefits. Under existing law, a MEWA is required to offer health care coverage benefits to any newly eligible person and his or her dependents under terms and conditions no less favorable than those offered to the MEWA employers' existing employees and their dependents under specified circumstances.

~~This bill would, commencing January 1, 2014, prohibit a MEWA from offering, issuing, selling, or renewing health care coverage benefits unless the MEWA discloses whether the benefits constitute minimum essential coverage, as defined under existing federal law.~~

This bill would, commencing January 1, 2014, prohibit a MEWA from offering, marketing, representing, or selling any product, contract, or discount arrangement as minimum essential coverage or as compliant with the essential health benefits requirement under the federal Patient Protection and Affordable Care Act, unless it meets the applicable requirements under that act.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Section 742.20 of the Insurance Code is amended~~
- 2 ~~to read:~~
- 3 ~~742.20. The Legislature finds and declares the following:~~
- 4 ~~(a) An alternative to insurance programs, health care~~
- 5 ~~maintenance organizations, and panel provider organizations was~~
- 6 ~~established by Congress in 1974 through the Employee Retirement~~
- 7 ~~Income Security Act (ERISA). Among the various employee~~
- 8 ~~benefit programs established and governed by ERISA are multiple~~
- 9 ~~employer welfare arrangements (MEWA), which are subject as~~

well to state regulatory and fiscal standards not inconsistent with ERISA. MEWAs permit employer members of trade associations to create trust funds for the purpose of offering and providing health care benefits to their employees. MEWAs can be created as fully insured or self-funded or partially self-funded benefit programs.

(b) The Legislature recognizes that some MEWAs provide an alternative mechanism to traditional health insurance for small employers. It is the intent of the Legislature to ensure the financial integrity of those MEWA programs that are already in existence by requiring self-funded or partially self-funded MEWAs to obtain a certificate of compliance from the Department of Insurance. In order for the Department of Insurance to grant a certificate of compliance, the MEWA must adhere to standards set forth in this act which are not inconsistent with the provisions of ERISA. Further, it is the intent of the Legislature to provide the Department of Insurance with the authority to levy monetary penalties and to revoke certificates of compliance from MEWAs that violate the provisions of this act.

(c) The federal Patient Protection and Affordable Care Act enacted various health care coverage market reforms that become operative on January 1, 2014. It is the intent of the Legislature to encourage MEWAs regulated by this article to provide certain essential health benefits to the extent not inconsistent with ERISA.

(d) The Legislature has passed significant reforms in the area of small group health insurance. This article, in no manner, circumvents these reforms nor is it intended to be a precedent to do so. Therefore, the small group reform legislation applies to MEWAs to the extent it is not inconsistent with ERISA.

(e) The provisions of this article are consistent with and authorized by ERISA, which confers upon the states limited authority to regulate MEWAs.

SEC. 2.

SECTION 1. Section 742.40 of the Insurance Code is amended to read:

742.40. (a) A multiple employer welfare arrangement shall offer health care coverage benefits to any new eligible person and his or her dependents under terms and conditions no less favorable to those offered to their employers' existing employees and their dependents, if the newly eligible person had health care benefit

1 coverage with either the same or a different multiple employer
2 welfare arrangement within 31 days. The new coverage shall
3 comply with existing eligibility rules of the multiple employer
4 welfare arrangement.

5 (b) A multiple employer welfare arrangement shall comply with
6 the requirements set forth in Sections 10198.7 and 10198.9.

7 ~~(e) Notwithstanding any other provision of law, commencing~~
8 ~~January 1, 2014, a multiple employer welfare arrangement shall~~
9 ~~not offer, issue, sell, or renew health care coverage benefits unless~~
10 ~~the multiple employer welfare arrangement discloses in all~~
11 ~~marketing material and solicitations whether the benefits constitute~~
12 ~~minimum essential coverage as defined in Section 5000A(f) of~~
13 ~~Title 26 of the Internal Revenue Code and any rules or regulations~~
14 ~~adopted thereunder.~~

15 (c) *Notwithstanding any other provision of law, commencing*
16 *January 1, 2014, a multiple employer welfare arrangement shall*
17 *not offer, market, represent, or sell any product, contract, or*
18 *discount arrangement as minimum essential coverage or as*
19 *compliant with the essential health benefits requirement under the*
20 *federal Patient Protection and Affordable Care Act, unless it meets*
21 *the applicable requirements under that act.*